

REBUTTAL TESTIMONY
OF
REGINA J. ELBERT, ESQ.
ON BEHALF OF
DOMINION ENERGY SOUTH CAROLINA, INC.
DOCKET NO. 2020-125-E

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A. My name is Regina J. Elbert, and my business address is 600 Canal
3 Place, 20th Floor, Richmond, Virginia 23219.

4 **Q. ARE YOU THE SAME REGINA ELBERT WHO PREVIOUSLY**
5 **SUBMITTED DIRECT TESTIMONY IN THIS PROCEEDING?**

6 A. I am.

7 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

8 A. The purpose of my rebuttal testimony is to respond to allegations
9 contained in the Direct Testimony of Scott Hempling on behalf of the South
10 Carolina Department of Consumer Affairs (“DCA”) about the annual
11 incentive plan (“AIP”) and long-term incentive programs that applied during
12 the test year to DESC.

13 Additionally, I respond to the proposals in the Direct Testimony of
14 William C. Kleckley on behalf of the South Carolina Office of Regulatory

1 Staff (“ORS”) and Mark Garrett on behalf of the Department of Defense and
2 All Other Federal Executive Agencies (“DoD-FEA”) regarding the same.

3 **Q. MR. HEMPLING ARGUES THAT DESC’S INCENTIVE**
4 **COMPENSATION PLANS REWARD DESC EMPLOYEES “FOR**
5 **TAKING ACTIONS THAT ARE ADVERSE TO CUSTOMERS” (P.**
6 **29). IS THAT THE CASE?**

7 A. No. Mr. Hempling cites no evidence to support his claim that the AIP
8 plan rewards actions that are adverse to customers. As the executive in
9 charge of these plans, I am not aware of the basis for this claim. To the
10 contrary, the goals and structures of the AIP are specifically crafted to align
11 the interests of employees with those of customers for their mutual benefit.

12 Specifically, the AIP supports the safe, reliable and economical
13 provision of electric power to customers and DESC’s corporate citizenship
14 and is structured and administered to achieve this purpose. Decisions made
15 in implementing the plan and approving payouts under it are made with these
16 goals in mind. I know this to be the case based on firsthand knowledge. If
17 these plans were motivating the sort of dysfunctional behavior that Mr.
18 Hempling unjustifiably assumes is taking place within DESC, I am unaware
19 of it.

20

1 **Q. DO THE FINANCIAL GOALS IN DESC'S INCENTIVE**
2 **COMPENSATION PLANS REWARD DESC EMPLOYEES FOR**
3 **FAILING TO PROTECT CUSTOMERS' INTERESTS?**

4 A. No. And this is where Mr. Hempling's logic is backwards. He argues
5 that incentive compensation plans should be tied exclusively to "non-
6 financial or operational performance measures such as safety or customer
7 satisfaction."¹ While DESC's incentive compensation plans are clearly and
8 appropriately focused on these goals, they are also focused on ensuring that
9 these goals are achieved within a culture of economic efficiency and cost
10 control. Financial goals are set for the Company at the beginning of each year
11 through the budgeting process. When those goals are met, costs are
12 controlled, and upward pressure on rates is reduced. The resulting culture of
13 economic efficiency and cost control is built up year by year and directly
14 benefits customers through a more efficient utility and lower rates. Mr.
15 Hempling's arguments, along with those of ORS witness Kleckley and DoD-
16 FEA witness Garrett, have customers' interest in these financial goals
17 backwards.

18

¹ Page 22 of 80.

1 **Q. IS USING EARNINGS MEASURES TO FOCUS EMPLOYEES ON**
2 **COST CONTROL AND ECONOMIC EFFICIENCY INCONSISTENT**
3 **WITH COST-OF-SERVICE REGULATION AS MR. HEMPLING**
4 **STATES?**

5 A. No. The logic of cost-of-service regulation is that rates are set to allow
6 a utility to cover its expenses and generate a reasonable level of earnings to
7 compensate the investors who make equity capital available to it if the utility
8 is properly managed. Including financial goals in employee incentive plans
9 is entirely consistent with the stated intention of this Commission in setting
10 rates, which is that a reasonable return in the form of earnings should be
11 earned through good management to support investment in the utility system.
12 The financial goals that Mr. Hempling states are inconsistent with cost-of-
13 service regulated utilities are an important tool the Company uses to
14 communicate to employees the necessity of managing operations so that a
15 reasonable return, as established by this Commission in setting rates, can be
16 earned. A firm that cannot earn its cost of capital, both debt and equity,
17 cannot stay in business for the long term.

18 **Q. HOW DOES THE COMPANY DETERMINE THAT THE EARNINGS**
19 **TARGETS IT SETS FROM YEAR TO YEAR ARE REASONABLE?**

20 A. This point is important, and one that is not reflected in Mr. Hempling's
21 critique of the AIP. Through the annual budget process, a reasonable level

1 of spending is calculated to achieve customer service, stewardship and
2 corporate citizenship goals within the context of fiscal responsibility and cost
3 control. The financial goals associated with the AIP are directly based on
4 that level of spending. They are neither arbitrary nor random as Mr.
5 Hempling seems to suggest.

6 Specifically, the financial targets reflected in the AIP are determined
7 by an independent committee of the Board of Directors to reflect the earnings
8 that will be produced if the operating units of the Company are able to meet
9 the capital and O&M budgets. The Company's leadership sets those budgets
10 each year by a process that specifically considers the investment that is
11 required for each of its operation units to achieve its customer service and
12 utility operations goals in a financially responsible way. Therefore, the
13 financial targets and the stewardship goals exist in a mutually dependent way
14 at all levels. Both sets of goals or targets are based on the overarching goal
15 of achieving operations and customer service goals at a reasonable cost to
16 customers. Both sets of constraints must be achieved for full payouts to be
17 made under the AIP.

18 The financial goals associated with the AIP communicate the fact that
19 the upward pressure on costs that these other goals might entail must be
20 balanced and absorbed within the revenues budgeted to do so. Mr. Hempling
21 appears to argue that operational goals should be disconnected from

1 budgetary constraints as reflected in earnings measures. Adopting his
2 suggestion would not be beneficial to customers.

3 **Q. MR. HEMPLING ARGUES THAT “BASING COMPENSATION ON**
4 **SHORT-TERM EARNINGS REWARDS COST-CUTTING” (P. 30).**
5 **HOW DO YOU RESPOND?**

6 A. Mr. Hempling is right to recognize that cost-cutting and customer
7 service exist in tension and that an incentive program must balance the
8 customers’ interest in cost-cutting with the customers’ interest in the
9 Company achieving safety, reliability, efficiency and other stewardship
10 goals. That is why the AIP reflects reasonable financial goals based on a
11 thorough budgeting process, which sets the level of spending that is deemed
12 to be sufficient to ensure customer service goals can be accomplished within
13 those financial constraints. Meeting budgetary goals does not entail
14 sacrificing stewardship or operational goals. The budget provides for them
15 to be accomplished in a fiscally responsible manner. The AIP balances
16 budgetary consideration with operational goals so that the two work in
17 tandem. Neither set of goals can be accomplished without the other. Mr.
18 Hempling’s cost-cutting critique ignores this fact.

19

1 **Q. HOW DO YOU RESPOND TO MR. HEMPLING’S CRITICISM OF**
2 **THE PLAN FOR PLACING GREATER WEIGHT ON FINANCIAL**
3 **GOALS FOR MORE SENIOR LEADERSHIP (P. 26)?**

4 A. Making leadership more directly responsible than line employees for
5 meeting budgetary and financial goals is entirely logical. The more senior
6 the leader, the more that leader is directly responsible for setting the budgets
7 on which financial goals are set, and the more directly responsible he or she
8 is for management decisions necessary to ensure that those goals are met.

9 **Q. HOW DO YOU RESPOND TO MR. HEMPLING’S TESTIMONY**
10 **THAT “BASING [CERTAIN LONG TERM EXECUTIVE]**
11 **COMPENSATION ON STOCK PRICE, ALONG WITH PAYING**
12 **COMPENSATION IN STOCK, REWARDS EXECUTIVES WHO**
13 **CHOOSE RATE-BASED CAPITAL EXPENDITURES OVER LESS**
14 **EXPENSIVE MEASURES” (P. 30) AND HIS CONTENTION THAT**
15 **“BASING COMPENSATION ON MARKET SHARE REWARDS**
16 **EFFORTS TO GAIN MARKET DOMINANCE—NOT THROUGH**
17 **MERIT BUT THROUGH ACQUISITIONS AND**
18 **ANTICOMPETITIVE CONDUCT” (P. 31)?**

19 A. Again, Mr. Hempling levels these criticisms without offering any
20 evidence to support the abuses he alludes to. In any event, the criticism is
21 misplaced. A utility’s stock price is an indicator of the confidence investors

1 have in that utility's leadership, its ability to anticipate and respond to the
2 rapid changes in the energy, environmental and regulatory landscape, and the
3 ability of its managerial team to execute on a strategy to meet those changes.
4 Tying an element of compensation to stock price for the most senior leaders
5 ensures that these leaders are not complacent in the face of the changes in the
6 industry. Stock-based compensation plays an important role in focusing
7 senior leadership on how the Company's strategic direction is being
8 evaluated by the financial markets on which it relies for capital and that are
9 uncompromising in their approach to evaluating the quality of leadership and
10 strategy.

11 **Q. UNDER THE AIP, IS OPERATIONAL EXCELLENCE**
12 **"COMPLETELY IRRELEVANT TO INCENTIVE**
13 **COMPENSATION" (P. 34)?**

14 A. No. As I explained in my Direct Testimony, incentive compensation
15 under the AIP drives not only operational excellence, but a culture of fiscal
16 responsibility. It encourages employees to work efficiently and to keep costs
17 low while delivering safe and reliable energy and supporting the Company's
18 commitment to be a responsible corporate citizen. Only a small portion of
19 most of the points a typical employee acquires under the AIP system are
20 based on the achievement of specific financial goals. Rather, most of the
21 points are earned based on other operating and stewardship

1 accomplishments, including safety, diversity and inclusion, environmental
2 goals, and other operating and stewardship goals.

3 **Q. HOW DO YOU RESPOND TO MR. HEMPLING'S**
4 **RECOMMENDATION "THAT THE COMMISSION SHOULD**
5 **"DECLARE THAT DESC'S RIGHT TO PROVIDE SERVICE**
6 **THROUGH A STATE-PROTECTED MONOPOLY IS**
7 **PROSPECTIVELY CONDITIONED ON DOMINION ENERGY'S**
8 **AGREEING TO CHANGE ITS EXECUTIVES' COMPENSATION"**
9 **(P. 43)?**

10 A. As my testimony shows, there is no misalignment between Dominion
11 Energy's compensation plans and the interest of customers.

12 **Q. ORS WITNESS KLECKLEY AND DOD-FEA WITNESS GARRETT**
13 **PROPOSE TO REMOVE FROM RATE BASE A PORTION OF**
14 **INCENTIVE COMPENSATION EXPENSE OR TO SPLIT PLAN**
15 **COSTS 50/50 WITH SHAREHOLDERS. HOW DO YOU RESPOND?**

16 A. For the reasons explained above, I disagree with this proposal. Mr.
17 Kleckley states that his reasoning is to "remove components of the AIP
18 related to financial performance-based metrics since they are tied directly
19 with increasing the financial performance of the Company rather than

1 individual employee performance.”² However, as discussed above, financial
2 performance-based metrics are critical to motivating employees to provide
3 economical service to customers. The proposal is not in customers’ long –
4 term best interests.

5 **Q. HOW DO YOU RESPOND TO WITNESS KLECKLEY’S**
6 **ARGUMENT THAT INCENTIVE COMPENSATION IS**
7 **“UNCERTAIN” (P. 6)?**

8 A. Incentive compensation is an ongoing expense of utility operations
9 that is reflected in test period expenses and is anticipated to be paid out in
10 future years. As I understand it, under cost-of-service regulation in South
11 Carolina, rates are set to reflect normal and expected levels of expense
12 measured through an historical test period. Incentive compensation is a
13 normal and expected component of the cost of utility operations as the test
14 period indicates. Mr. Kleckley has provided no evidence to the contrary.

15 **Q. MR. KLECKLEY AND MR. GARRETT ALSO PROPOSE TO**
16 **REMOVE ALL OR A PORTION OF COSTS FOR THE COMPANY’S**
17 **LTIP. HOW DO YOU RESPOND?**

18 A. The same justifications apply to LTIP as to those parts of the AIP that
19 are associated with financial goals. Management is charged with achieving a

² Page 5 of 15.

1 reasonable balance between achieving non-financial goals and cost control.
2 The LTIP is an important part of how that balance is communicated to senior
3 leadership. This is a standard executive benefit in the utility industry and in
4 industries across the economy.

5 **Q. FINALLY, MR. KLECKLEY PROPOSES TO REMOVE 50% OF**
6 **THE AMOUNTS RELATED TO BASE SALARY AND BENEFITS**
7 **FOR THE FOUR HIGHEST COMPENSATED EXECUTIVES (P. 8).**
8 **IS DOING SO JUSTIFIED?**

9 A. This is not justified. These employees are an integral part of the
10 leadership team who ensure that safe, reliable and economical electric service
11 is provided to customers across Dominion Energy, Inc.'s businesses,
12 including customers at DESC. Accordingly, a portion of their time was
13 appropriately allocated to DESC. Mr. Kleckley provides no evidence that
14 the time did not benefit the Company or its customers, and there is no basis
15 to exclude the labor costs associated with these employees from the revenue
16 requirements of the utility.

17 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

18 A. Yes, it does.